



Rob McKenna

**ATTORNEY GENERAL OF WASHINGTON**

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

July 28, 2008

**Hand Delivered**

Ronald R. Carpenter  
Clerk of the Supreme Court  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Re: ***Community Care Coalition v. Reed (I-1029), Supreme Court #81857-6***

Dear Mr. Carpenter:

Enclosed for filing is an original and one copy of the Secretary of State's Response to Motion for Expedited Review of Petition Against State Officer, Declaration of Catherine S. Blinn, and an Affidavit of Service.

Thank you for your consideration.

Sincerely,

*Jeff D. Ever*  
FOR

Maureen Hart  
Solicitor General

Enclosures

cc: Counsel

**SUPREME COURT OF THE STATE OF WASHINGTON**

COMMUNITY CARE COALITION  
OF WASHINGTON; HOME CARE  
OF WASHINGTON, INC.; THE  
FREDRICKSON HOME; CYNTHIA  
O'NEILL, a Washington Citizen and  
Taxpayer; RON RALPH and LOIS  
RALPH, husband and wife and  
Washington Citizens and Taxpayers,

Petitioners,

v.

SAM REED, Secretary of State,

Respondent.

SECRETARY OF  
STATE'S RESPONSE  
TO MOTION FOR  
EXPEDITED REVIEW  
OF PETITION  
AGAINST STATE  
OFFICER

**I. IDENTITY OF RESPONDING PARTY**

Respondent Secretary of State submits this response to Petitioners' Motion for Expedited Review of Petition Against State Officer.

**II. NATURE OF THE CASE**

Petitioners filed this action in this Court on July 22, 2008, captioning the action as "Petition Against State Officer Sam Reed; Writ of Mandamus; Writ of Prohibition; In the Alternative Writ of Certiorari." Petitioners challenge the Secretary of State's decision under RCW 29A.72.170 to accept and file Initiative 1029 to the people.

### **III. STATEMENT OF THE CASE**

#### **A. Background Relating To Initiative 1029**

The right to exercise the initiative power is a constitutional right. “[T]he people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature”. Const. art. 2, § 1(a). Article II, section 1 “is self-executing, but legislation may be enacted especially to facilitate its operation.” Cont. art. 2, § 1(d).

Statutory provisions “enacted especially to facilitate” the initiative power under article II, section 1 principally are codified in RCW 29A.72. Under RCW 29A.72.010, “[i]f any legal voter of the state, either individually or on behalf of an organization, desires to . . . submit a proposed initiative measure to the people, . . . he or she shall file with the secretary of state a legible copy of the measure proposed . . . accompanied by an affidavit that the sponsor is a legal voter and a filing fee prescribed under RCW 43.07.120.” On March 12, 2008, in compliance with this statute, Linda S. Lee filed a proposed initiative measure to the people relating to “long-term care services.” *See* Pet., Ex. B, Affidavit For Proposed Initiative, identifying the measure as an initiative to the people.

This was the only filing received by the Secretary of State under RCW 29A.72.010, for what became I-1029. No one filed the same

proposed measure under RCW 29A.72.010 as an initiative to the legislature.

By letter dated March 12, 2008, to Linda S. Lee, the Secretary of State's Office "acknowledge[d] the filing of a proposed Initiative to the People relating to long-term care services, and the payment of the filing fee", and advised the sponsor that the proposed measure would be forwarded to the Code Reviser for review as provided under RCW 29A.72.020. Pet., Ex. C. In keeping with RCW 29A.72.020, following Code Reviser review, the sponsor filed the statutorily required Certificate of Review and the final version of the measure with the Secretary of State's Office. Pet., Ex. E. By letter of March 28, 2008, to Linda S. Lee, the Secretary of State acknowledged receipt of "a revised copy of your proposed Initiative to the People relating to long-term care services . . . together with the Certificate of Review from the Code Reviser" and advised the sponsor that the initiative proposal was assigned the number 1029. Pet., Ex. F. RCW 29A.72.040 requires the Secretary of State to assign a separate series of numbers to initiatives to the legislature, and initiatives to the people. The number 1029 is from the numbering series for initiatives to the people.

As required by RCW 29A.72.040 and .060, the Attorney General then prepared a ballot title and summary for Initiative 1029. On April 4,

2008, the Attorney General transmitted the ballot title and summary to the Secretary of State's Office, explaining that "[p]ursuant to RCW 29A.72.060, we supply herewith the ballot title and ballot measure summary for Initiative No. 1029 to the People (an act relating to long-term care services)." Pet., Ex. H. By letter of the same date, the Secretary of State's Office provided the sponsor, Ms. Lee, a copy of the ballot title and summary "for Initiative to the People No. 1029" as submitted by the Attorney General, and advised her to "read the Washington laws relating to the requirements of petition layout and signature gathering (RCW 29A.72)." Pet., Ex. I. The sponsor of Initiative 1029 then began gathering signatures on petitions for I-1029.

To the extent that the constitution regulates such petitions, article II, section 1(a) simply provides that, "[e]very such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state." RCW 29A.72.150 parrots the constitution in this respect, providing that, "[w]hen the person proposing any initiative measure has obtained signatures of legal voters equal to or exceeding eight percent of the votes

cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification . . . the petition containing the signatures may be submitted to the secretary of state for filing.”

The time for submitting such petitions also is governed by article II, section 1(a) of the Washington Constitution. It provides that “[i]nitiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon”.<sup>1</sup> This constitutional provision also is reflected in statute. *See* RCW 29A.72.160 (“An initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election, must be submitted not less than four months before the date of such election”). Article I, section 1 further provides that “[i]f filed at least four months before the election at which [the initiative petitions] are to be voted upon, [the secretary of state] shall submit the same to the vote of the people at the said election.”

On July 3, 2008, the date that precedes the November 4, 2008, general election at which I-1029 would be voted upon, by four months, the

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<sup>1</sup> In contrast, initiative petitions to the legislature “shall be filed with the secretary of state . . . not less than ten days before any regular session of the legislature.” Const. art. II, §1(a).

sponsor filed thousands of petitions for I-1029 with the Secretary of State.

The Secretary of State has accepted and filed the petitions.

A few days before the petitions for I-1029 were filed, a person whose identity is unknown called to the attention of the Secretary of State that certain language in the petition forms for I-1029 identified the measure as an initiative to the legislature, rather than an initiative to the people. The day before the petitions for I-1029 were filed, counsel for the Petitioners in this matter, acting on Petitioners' behalf, wrote to the Secretary of State urging him to reject the petitions for I-1029 for this reason. Pet., Ex. K at 3. ("[T]he petitions that were circulated for signatures were not insubstantial compliance with the law, and must be rejected.")<sup>2</sup>

The authority of the Secretary of State to refuse to file an initiative petition is stated in RCW 29A.72.170. It provides in relevant part:

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<sup>2</sup> Petitioners now have a new-found position. Their Petition seeks to compel the Secretary of State to convert I-1029 from an initiative to the people into an initiative to the legislature. Petitioners point to no constitutional or statutory authority for converting a measure proposed as an initiative to the people into an initiative to the legislature, or authorizing the Secretary of State to take such an action. Nor do Petitioners explain how opponents of an initiative may compel the proponents of an initiative to the people, to proceed instead, with an initiative to the legislature. As previously explained, the initiative process begins when a voter proposes an initiative and identifies the type of initiative being proposed. No law authorizes such a proposal to be changed mid-stream.

The secretary of state *may* refuse to file any initiative or referendum petition being submitted upon any of the following grounds:

(1) That the petition does not contain the information required by RCW 29A.72.110, 29A.72.120, or 29A.72.130.

...

If none of the grounds for refusal exists, the secretary of state must accept and file the petition.

(Emphasis added.)

RCW 29A.72.120 sets forth the form for an initiative petition for submission to the people. It provides:

Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election must be *substantially in the following form*:

The warning prescribed by RCW 29A.72.140; followed by:

#### INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To the Honorable ....., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. ...., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the ..... day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.



The following declaration must be printed on the reverse side of the petition:

I, ....., swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

...

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

(Emphasis added.)

Thus, under RCW 29A.72.170, “[t]he secretary of state may refuse to file any initiative or referendum petition being submitted” only if the petition is not in “substantially” (RCW 29A.72.120) the form set forth in the relevant statute. As this Court has held, “[t]he Secretary’s right to refuse is conditioned by the discretionary word ‘may.’ Clearly his decision is a discretionary administrative act. We have so held for more than six decades.” *Schrempp v. Munro*, 116 Wn.2d 929, 937, 809 P.2d 1381 (1991) (citing *State ex rel. Harris v. Hinkle*, 130 Wash. 419, 429, 227 P. 861 (1924)).

Insofar as Petitioners complain about the form of the petitions for I-1029, the petitions vary from the form set out in RCW 29A.72.120 in that (1) the capitalized caption from RCW 29A.72.120 does not appear on the petitions, and (2) sixty-three (63) words into that portion of the format beginning with “To the Honorable”, and more than 100 words into the first page of the petition, the petition requests that the measure be transmitted to the legislature to enact into law, rather than requesting that it be submitted to the voters at the general election on November 4, 2008.<sup>3</sup>

Mindful that “exercise of the initiative process is a constitutional right”, *Schrempp*, 116 Wn.2d at 932, and that “legislation concerning the . . . process may be enacted only to facilitate its operation”, *id.* (citing const. art. II, § 1(d)), the Secretary of State exercised his discretion under RCW 29A.72.170 to accept and file the petitions for I-1029. The Secretary, through counsel, so advised counsel for Petitioners. Pet., Ex. L.

In declining the request by counsel for Petitioners to reject I-1029, the Secretary of State explained that from its inception I-1029 was proposed as an initiative to the people; the proponents built their campaign

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<sup>3</sup> In their Motion for Accelerated Review, Petitioners state “these petitions are in the form prescribed by RCW 29A.72.110 for an initiative to the legislature”. Mot. at 7. This is not accurate. The petitions would not conform in all respects to the statutory form for such initiatives, either. *See* RCW 29A.72.110. For example, there is no caption identifying the measure as an initiative to the legislature as set forth in that statute. And other aspects of the petition, such as the “Yes 1029” graphic prominently displayed on its first page, would be inconsistent with an initiative to the legislature in this case.

around the constitutional deadlines for an initiative to the people; there was no indication that the proponents of I-1029 had done anything other than make a mistake on the petition for I-1029; there was no indication that the proponents of I-1029 had in any other respect identified I-1029 as an initiative to the legislature; and there was no factual basis for believing that the form of the petition influenced the number of valid signatures gathered for the measure. Pet., Ex. L. The Secretary of State further explained that rejecting the petitions for I-1029, as counsel for Petitioners requested, “would fail to afford Washington’s voters the opportunity to consider, and either approve or reject the measure, where a constitutionally requisite number of qualified voters express support for its enactment to be considered.” Pet., Ex. L. at 3.

#### **B. Procedural Background of the Litigation**

On July 22, 2008, Petitioners filed the instant case denominating it as an original action seeking a writ of mandamus, prohibition or certiorari, to compel the Secretary of State to reject I-1029, to instead convert it into an initiative to the legislature, and to process it as an initiative to the legislature. At the same time, Petitioners filed a Motion for Accelerated Review, proposing that this matter be briefed and argued on an expedited basis, and that the Court issue an order with respect to whether I-1029 should appear on the general election ballot, in time to remove it from the

ballot and the Voters Pamphlet, should the Court conclude that that I-1029 should not appear on the ballot.

#### **IV. RESPONSE TO MOTION FOR EXPEDITED REVIEW**

Respondent disagrees with the arguments made by Petitioners to support accelerated review of this matter. The Secretary intends to fully contest the legal positions advanced by Petitioners in this matter, including but not limited to Petitioners' assertion that the Court has jurisdiction over this matter.<sup>4</sup> *See, e.g., Schrempp v. Munro*, 116 Wn.2d 929.

The fact remains, however, that this action has cast a cloud over the initiative process with respect to I-1029. In the interest of providing certainty for voters and in the accuracy of the ballot, the Secretary of State supports expedited disposition of the Petition in this case. However, the schedule proposed by Petitioners would not allow adequate time for removal of I-1029 from the Voters' Pamphlet and the ballot, if the Court were to so order.

For reasons fully set forth in the Declaration of Catherine S. Blinn, filed with this response, the last day on which I-1029 could be removed from the Voters' Pamphlet would be Monday, September 8, 2008. Blinn Decl. ¶ 3.a. The last day on which election officials could insert a

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<sup>4</sup> The Secretary of State does not contend that the Court's long line of cases declining to consider challenges to the substantive validity of ballot measures applies to this case. *See, e.g., Coppernoll v. Reed*, 155 Wn.2d 290, 297, 119 P.3d 318 (2005).

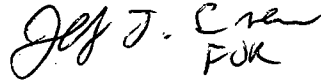
statement into the Voters' Pamphlet explaining that although I-1029 appears in the Voters' Pamphlet, it will not appear on the ballot, would be Friday September 12, 2008. *Id.* ¶ 3.b. As the Blinn Declaration explains, Respondent does not favor this approach because it would not serve well to allay voter confusion or promote confidence in the election process. *Id.* The last day on which I-1029 could be removed from the general election ballot would be Friday, September 12, 2008. *Id.* ¶ 3.c.

For these reasons, the Secretary of State proposes the following accelerated schedule culminating in an order from the Court with respect to whether I-1029 will appear on the general election ballot, to be issued by Monday, September 8, 2008.

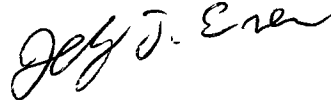
July 31, 2008	Parties File any Agreed Statement of Facts
August 5, 2008	Petitioners File Opening Brief
August 18, 2008	Respondent Files Brief
August 22, 2008	Petitioners File Reply Brief
Week of September 1, 2008	Oral Argument
September 8, 2008	Date by Which Order Issued

RESPECTFULLY SUBMITTED this 28th day of July,  
2008.

ROBERT M. MCKENNA  
Attorney General

Handwritten signature of Jeff T. Even in cursive script.

MAUREEN HART, WSBA #7831  
Solicitor General

Handwritten signature of Jeff T. Even in cursive script.

JEFFREY T. EVEN, WSBA #20367  
Deputy Solicitor General  
PO Box 40100  
Olympia, WA 98504-0100  
(360) 753-2536 Fax (360) 664-2963

NO. 81857-6

**SUPREME COURT OF THE STATE OF WASHINGTON**

COMMUNITY CARE COALITION  
OF WASHINGTON; HOME CARE  
OF WASHINGTON, INC.; THE  
FREDRICKSON HOME; CYNTHIA  
O'NEILL, a Washington Citizen and  
Taxpayer; RON RALPH and LOIS  
RALPH, husband and wife and  
Washington Citizens and Taxpayers,

Petitioners,

v.

SAM REED, Secretary of State,

Respondent.

DECLARATION OF  
CATHERINE S. BLINN

I, Catherine S. Blinn, declare as follows:

1. I am over 18 years of age and competent to testify. I currently serve as an Assistant Director of Elections in the Office of the Secretary of State.

2. At the request of counsel, I have consulted with others in my office and in county auditors' offices around the state in order to determine the last date by which Initiative 1029 could be removed from the Voters' Pamphlet and from the 2008 general election ballots.

3. Based upon these consultations, it is my opinion that:
  - a. The last day by which the Secretary of State could, upon receipt of an Order from this Court, remove Initiative 1029 from the Voters' Pamphlet is Monday, September 8, 2008.
  - b. The last day by which the Secretary of State could, upon receipt of an Order from this Court, insert a statement into the Voters' Pamphlet explaining that, although Initiative 1029 appears in the Voters' Pamphlet, it will not appear on the ballot, would be Friday, September 12, 2008. The Secretary of State's Office regards this approach as undesirable because it may lead to voter confusion and undermine voter confidence in the election process.
  - c. The last day by which the Secretary of State could, upon receipt of an Order from this Court, instruct the county auditors to exclude Initiative 1029 from the ballots to be printed for the 2008 general election would be Friday, September 12, 2008.
4. The opinions expressed above are based upon the following information.
5. Deadlines for the Secretary of State to print the Voters' Pamphlet, and for county auditors to print general election ballots, are



driven by the following statutory deadlines for taking various actions in preparation for the general election, and by the substantial administrative work that must be completed in order to prepare and timely distribute the Voters' Pamphlet and general election ballots prior to the statutory deadlines, described in paragraphs 6 through 12 below:

- a. The last day for the Secretary of State to certify the results of the state primary election is September 9, 2008. RCW 29A.60.240.
- b. The last day by which county auditors must mail general election ballots to overseas and military voters is October 5, 2008. RCW 29A.40.070. We anticipate that more than 40,000 (and perhaps substantially more) will be mailed.
- c. The last day by which county auditors must make ballots available, other than to overseas and military voters, is October 15, 2008. RCW 29A.40.070.
- d. Election day is November 4, 2008.

6. With regard to the Voters' Pamphlet, a decision to remove an initiative would require substantial reformatting of the publication, affecting more than the pages relating to the particular initiative. The Voters' Pamphlet is published in 43 regional editions, each of which would need to be separately reformatted and prepared for publication.

Pages can only be added or removed from the Voters' Pamphlet in blocks of 8 pages, and so changing the content affects not only the total pagination but also the number of "fill" pages needed to round out the pages to multiples of 8. Removal of an initiative would also affect the tables of contents for all 43 editions, as well as the layout of candidate pages. Finally, the total number of pages in the Voters' Pamphlet determines the paper requirement for printing the pamphlet, and contractually our deadline to provide the printer with a total page count for this purpose is September 8, 2008.

7. An alternative to removing Initiative 1029 from the Voters' Pamphlet would be to insert a statement informing the voters that, although the measure appears in the Voters' Pamphlet, it will not appear on the ballot. We could insert such a statement if we received an appropriate court order no later than Friday, September 12, 2008. However, to the extent that an expedited decision from the Court as to whether I-1029 will appear on the ballot is important to avoid voter confusion and maintain voter confidence in the election process, this approach would be less than ideal.

8. Ballots are printed by each of the county auditors, rather than by the Secretary of State. In order to form an opinion as to the last date by which Initiative 1029 could be removed from the ballot, I consulted with

relevant staff members in a number of county auditor offices. Counties typically begin formatting ballots shortly after the primary, although they cannot determine the final content until the results of the primary are certified. Certification of the primary election results will occur on September 9, 2008. In addition, substantial time is required for ballot formatting after its content is certain, because every county must prepare multiple ballot styles based on every combination of issues and offices that will appear in various parts of the county. This can amount to hundreds of different ballot styles within a single county. For example, Snohomish County will have approximately 714 ballot styles and Pierce County will have approximately 380 ballot styles. Each of these ballot styles must be carefully reviewed and proof read for accuracy. Additionally, since by statute initiatives appear first on the ballot (RCW 29A.36.121(2)), the removal of an initiative makes it necessary to reformat the entire ballot because placement of all other issues and offices on the ballot would be affected.

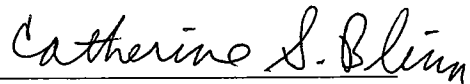
9. Orders for printing ballots must be placed promptly. Not only must counties consider the time necessary for the printers to perform the actual task of printing numerous ballot styles, but orders must be promptly entered into the queue of jobs the printer will perform. Counties print ballot styles through private vendors, many of whom print ballots for

numerous jurisdictions and often in multiple states. All of these jurisdictions are in competition to get their ballots printed promptly. For example, one printer that prints for at least four Washington counties (including Spokane and Snohomish) also prints ballots for a significant number of California counties.

10. After printers receive the ballot orders, they prepare proofs of each ballot style, and provide them to the county auditors for review and correction of any errors, and to test the proofs in the tabulation equipment. After counties approve these proofs (with or without changes), the ballots are printed.

11. After ballots are printed, county auditors collate different ballot styles with the correct personalized outgoing envelopes, correct personalized return envelopes, security envelopes, and instruction sheets.

12. I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge, and that I executed this declaration at Olympia, Washington, in the County of Thurston, this 25<sup>th</sup> day of July, 2008.

  
Catherine S. Blinn

**SUPREME COURT OF THE STATE OF WASHINGTON**

# AFFIDAVIT OF SERVICE

V.

Respondent.

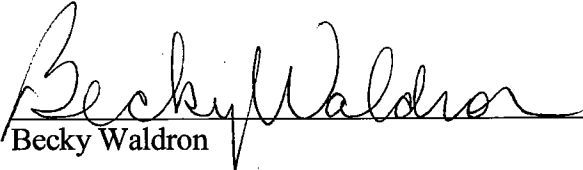
I am over the age of 18 years and am not a party to the within cause. I am a legal assistant in the Attorney General's Office and on this date I caused to be served a true and correct copy of Secretary of State's Response to Motion for Expedited Review of Petition Against State Officer on the following person(s):

Narda Pierce  
Kathleen Benedict  
711 Capitol Way S., Suite 605  
Olympia, WA 98501

[☒] First Class Mail  
[☒] E-Mail:  
pierce@benedictlaw.com  
benedict@benedictlaw.com

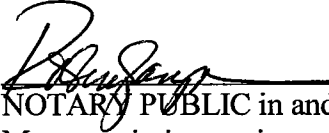
Knoll Lowney  
Attorney at Law  
2317 E John Street  
Seattle, WA 98154-1065

[☒] First Class Mail  
[☒] E-Mail: knoll@igc.org

  
Becky Waldron

SIGNED AND SWORN to before me this 28<sup>TH</sup> day of July, 2008, by

Becky Waldron.

  
NOTARY PUBLIC in and for the State of Washington

My commission expires: 8-12-08

